



## Procedures for Implementing Executive Order 13160: Ensuring Equal Opportunity in RRB-Conducted Education and Training Programs

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### 1. PURPOSE

The purpose of this Procedure is to establish the process for implementing Executive Order (EO) 13160 and the means by which complaints will be received and addressed by the Railroad Retirement Board (RRB) under this EO.

### 2. BACKGROUND

On June 23, 2000, the White House issued EO 13160, *Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation and Status as a Parent in Federally Conducted Education and Training Programs*.

This EO provides that “No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation and status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.”

On January 18, 2001, as directed in the EO, the Attorney General issued the Department of Justice’s (DOJ’s) *Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs*. The RRB’s procedure follows the requirements set out in the Guidance Document. The full texts of the EO and the DOJ Guidance Document are available on DOJ’s Website at [www.usdoj.gov/crt/cor/13160.htm](http://www.usdoj.gov/crt/cor/13160.htm).

### 3. DEFINITIONS

**Federally conducted education and training programs and activities** include programs and activities conducted, operated, or undertaken by an executive department or agency.

**Protected status** refers generally to the nine protected characteristics (cited in Section 2 above) which are the subject of this EO.

**Status as a parent** refers to the status of an individual who is:

- a biological parent;
- an adoptive parent;



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- a foster parent;
- a stepparent;
- a custodian of a legal ward;
- *in loco parentis* over such an individual; or
- actively seeking legal custody or adoption of such an individual.

To be covered by this procedure, the claimed parental status must relate to a child or other individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability.

#### **4. RELATION OF EO 13160 TO OTHER LAWS, REGULATIONS AND EOs**

Employees of the RRB and other Federal agencies are covered by this EO when participating in RRB-conducted educational and training programs and activities. Such individuals, however, are already protected under a number of existing Equal Employment Opportunity (EEO) laws, regulations, and EOs, including:

- Title VII of the Civil Rights Act of 1964 (Title VII) (which covers race, color, religion, sex, and national origin);
- Sections 501 and 504 of the Rehabilitation Act (Sections 501 and 504) (disability);
- the Age Discrimination in Employment Act (ADEA) (age);
- the Equal Employment Opportunity Commission's (EEOC's) Federal Sector EEO Regulations, 29 CFR Part 1614 (which covers complaints filed under the above laws and is the basis for the RRB's EEO complaint procedures); and
- EO 11478, as amended, (race, color, religion, sex, national origin, disability, age, sexual orientation, and status as a parent).

Consistent with EO 13160, the RRB intends to provide a streamlined procedure for resolving complaints and to protect an aggrieved employee's rights by processing complaints under the statutes that provide the greatest protection in terms of monetary damages and other relief for prevailing parties. Therefore, whenever an employee files a complaint under EO 13160, the RRB will inquire whether the complaint is related to his/her employment and, if so, whether s/he has filed any other claims arising out of the same circumstances. [If the complaint is not employment related, additional information will be obtained to determine the appropriate venue for handling the complaint.]



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- If an employee indicates that s/he has not filed any other claims at the time of filing a complaint under EO 13160, the employee may nevertheless subsequently elect to file a related claim under Title VII, Section 504, the ADEA, or EO 11478, provided the employee follows the appropriate filing procedures and takes steps to initiate the complaint within the relevant time limits. OEO staff will explain to the employee the relevant procedures for each of these forums so that the employee may make an informed decision as to the venue in which to bring his/her claim.
- The General Agreement between the RRB and the Council of AFGE Locals in the Board provides that, for employees covered by the bargaining unit, the negotiated grievance procedures shall be the exclusive procedures for resolving matters not expressly excluded. Allegations of discrimination based on race, color, religion, sex, national origin, age and disability are expressly excluded from coverage under the negotiated procedures. However, claims based on sexual orientation and status as a parent are not excluded. Therefore, bargaining unit employees alleging discrimination based on sexual orientation or status as a parent must initiate such claims with the Union. By mutual agreement, the employee and the Union may waive the grievance procedure and allow the employee to proceed under another available procedure. OEO staff will explain this requirement to any bargaining unit employee attempting to initiate a complaint based on sexual orientation or status as a parent.
- The RRB has no specific complaint procedure solely related to EO 11478. Therefore, claims filed under that EO would generally be addressed under the negotiated grievance procedure (for bargaining unit employees, if not excluded by the Union agreement) or the administrative grievance procedure (for non-bargaining unit employees).

The RRB also has an administrative complaint procedure for complaints based on sexual orientation that parallels the EEO complaint procedure except that the decision of the Board Members is final and there are no hearing or appeal rights beyond the Board.

Therefore, when an individual files claims under both EOs 13160 and 11478, the individual must elect a single forum in which to pursue the claim – i.e., the negotiated or administrative grievance procedure (as applicable), the sexual orientation complaint procedure (if applicable), or the complaint procedure for EO 13160 described below.



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- Complaints filed under both EO 13160 and existing EEO laws will be consolidated and adjudicated under the relevant EEO statutes (i.e., Title VII, Sections 501/504, and/or the ADEA). The same applies to complaints filed under all three forums – both EOs 13160 and 11478 and an EEO statute. Such complaints will be handled under the RRB's established EEO complaint procedure.
- If an employee chooses to proceed solely under this EO, the complaint procedures set forth below will govern the disposition of his/her complaint.

### 5. EO 13160 COMPLAINT PROCEDURES

***Filing a Complaint.*** Any individual who believes that s/he has been discriminated against by the RRB in violation of EO 13160 or its implementing regulations, rules, policies or guidance, including the DOJ Guidance Document, may, personally or through a representative, file a written complaint with the RRB.

Complaints must be addressed, within 180 calendar days of the alleged noncompliance or the date the complainant became aware of the noncompliance, in writing, to the address below:

Director of Administration  
Railroad Retirement Board  
844 North Rush Street  
Chicago, Illinois 60611-2092

The Director of Administration (DA) will forward all complaints to the Office of Equal Opportunity (OEO) for processing. The Director of Equal Opportunity (DEO), or his/her designee, will accept and arrange for investigation of all complete complaints for which the agency has jurisdiction.

***Complete Complaints.*** In order to be accepted by the RRB, all written complaints must be "complete complaints." A complete complaint must:

- include the name, address, and telephone number of the complainant;
- identify whether the complainant is a federal employee and whether the complainant's involvement in the relevant education program was related to his/her employment;



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- describe the alleged discriminatory conduct in sufficient detail to inform the agency as to the nature and approximate date of the alleged violation; and
- be signed by the complainant or by someone authorized by the complainant to sign on his/her behalf.

Acceptance and processing of incomplete complaints will be delayed pending receipt of additional information.

***Time Limits for Filing Complaints.*** As a general matter, all complaints must be filed within 180 days of the alleged discrimination. However, the RRB may extend this time limit for the reasons cited below:

- if the complainant can demonstrate that s/he had no notice of the time limit and was not otherwise aware of it; or
- if the complainant can demonstrate that s/he was prevented by circumstances beyond his/her control from submitting the complaint in a timely fashion; or
- for other reasons, or under other circumstances, considered sufficient by the RRB.

For purposes of determining when a complaint is timely filed, a complaint mailed to the RRB will be deemed filed on the date that it is postmarked. Any other complaint will be deemed filed on the date that it is received by the DA, OEO or any other RRB office, or by the RRB mailroom, whichever is earlier.

If a complaint is filed within 180 days of the alleged discrimination, but the RRB subsequently determines that the complaint is not a “complete complaint,” the complainant’s claims shall nevertheless be deemed filed in a timely manner, and the complainant shall be given an appropriate opportunity to amend his/her original complaint.

If a complaint is rejected as untimely filed, the complainant will be so notified within 10 work days of receipt of the complaint and will be afforded an opportunity to present any mitigating reasons for the untimely filing of the complaint.

***Class Complaints.*** Any individual who believes that any specific class of persons has been subjected by the RRB to discrimination prohibited by EO 13160 or any of its implementing regulations, rules, policies, or guidance, including DOJ’s Guidance Document, may file a class complaint with OEO, provided that the individual is either a member of the allegedly aggrieved class of



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persons or a representative of a member of the allegedly aggrieved class of persons.

If a claim of class discrimination is employment related and the individual bringing the claim has not already filed an EEO claim, OEO will give the individual the option of having the claim handled in the EEO complaint forum (provided such a complaint would be timely filed). This procedure will provide the most structured manner of adjudicating the claim and will maximize the class members' ability to obtain relief if the claim is sustained.

Class complaints filed solely under EO 13160 will be handled in a manner similar to individual complaints, relying on EEOC guidance and applicable case law relative to processing and adjudicating class complaints of discrimination.

***Legal Representation.*** Any individual filing a complaint under EO 13160 or any of its implementing regulations, rules, policies, or guidance may be represented and assisted in all stages of these proceedings by an attorney or representative of his/her own choosing. When the complainant is an employee, s/he may elect a Union representative as his/her representative of choice.

An individual has a responsibility to promptly notify the DEO if s/he retains legal counsel or any other representative with respect to these proceedings, and to provide the DEO with the name, address, and telephone number of any attorney or other representative. In addition, it is an on-going responsibility of the complainant to advise the DEO as to any changes with respect to the status of his/her representation. The RRB will include a notice of these obligations in all correspondence to complainants and in all procedures disseminated to employees or the public.

***Initial Review by the Office of Equal Opportunity.*** Within 10 work days of receipt of a complete complaint, OEO will send a written notice of receipt and acceptance to each complainant.

Upon receipt of a complaint filed under this EO, OEO must assess the complaint and determine how to proceed. This assessment will include but not be limited to

- whether the complaint is a complete complaint;
- whether it was filed in a timely manner;
- whether it is an individual or class complaint; and
- in the case of a Federal employee, whether the complaint should be consolidated with another complaint and transferred, if necessary.



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After reviewing the complaint, OEO may need to obtain additional information from the complainant. If a complainant fails to provide additional information, or otherwise respond to an OEO request for additional information within 30 days of the complainant's receipt of the notice, without good cause shown, the DEO may dismiss the complaint. The letter to the complainant requesting further information will specify the time frame for response and the potential for dismissal if the response is not submitted within 30 days. Complainants may appeal such dismissals to the three-member Board using the procedure outlined at "**Appeals**" below. If, subsequent to such dismissal, the agency receives a reply from the complainant that shows just cause for the delay, OEO will reinstate the complaint for processing.

In certain instances, OEO may determine that a complaint should be dismissed because the alleged discriminatory conduct did not occur in a Federally-conducted education or training program. In such cases, OEO will forward the complaint to the DA, who will issue a brief written determination setting forth the basis for the dismissal and advising the complainant of his/her right to appeal this decision to the Attorney General for a final determination regarding coverage pursuant to Section 2-203 of the EO. Responsibility for issuing such final determinations regarding coverage is delegated to the Assistant Attorney General for Civil Rights, who shall conduct, handle, or supervise the performance of this function.

**Alternative Dispute Resolution (ADR).** Before undertaking a formal investigation, the RRB will pursue resolution of all complaints filed under this EO through ADR procedures, whenever possible. If an informal resolution of a complaint between a complainant and the RRB cannot be reached within a reasonable period of time (generally 45 days), or if efforts to achieve an informal resolution appear to become futile, OEO will initiate a formal investigation. Efforts to resolve the complaint informally will continue throughout the course of a formal investigation if and when appropriate opportunities arise.

**Formal Investigation.** If a decision is made to initiate a formal investigation, the DEO will notify the complainant in writing. OEO will arrange for investigation by an impartial investigator and will complete the investigation within 180 days of the agency's receipt of a complete complaint unless the investigative period is extended by mutual agreement between OEO and the complainant for an additional period not to exceed 90 days. The investigation will include a thorough review of the circumstances under which the alleged discrimination occurred and any other circumstances which may constitute, or appear to constitute, discrimination against the complainant. The investigator will interview the complainant





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and other relevant witnesses and obtain any documents concerning the complaint.

***Witness Participation.*** A formal investigation may require the cooperation and participation of other agency employees. Employees who are required to participate in any investigation concerning violations of this EO will do so as part of their official duties and during the course of regular working hours.

Pursuant to the General Agreement between the RRB and the Council of AFGE Locals in the Board (Article 3, Section 4, para. 6), an employee called as a witness in an investigation will be informed that s/he has the right to union representation if s/he:

- is questioned as part of an investigation;
- reasonably believes that disciplinary action may result; and
- requests union representation.

***Findings.*** Upon completion of a formal investigation, OEO will forward the investigator's report to the DA. Within 30 days of receipt of the report, the DA will issue a written decision setting forth the results of the investigation and, as appropriate, making recommendations for any corrective and/or remedial action. A copy of the investigative report will be sent, with the decision letter, to:

- the complainant;
- the complainant's union representative, if applicable;
- the Executive Committee (EC) official in whose organization the complaint occurred; and
- the employee who is the subject of the report, if different from the above management official.

If the DA is named or included as an official responsible for the alleged discrimination, OEO will forward the investigator's report to the General Counsel (GC), who will complete the above actions.

Upon receipt of a decision from the DA (or GC) that indicates there has been a violation of the EO or its implementing rules, regulations, policies, or guidance, the appropriate EC official shall review the decision, the report and all relevant supporting material to determine:

- what, if any, disciplinary action is appropriate; and





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- whether any corrective or remedial action should be initiated, as recommended by the DA (or GC).

If the official determines that the complainant is entitled to some form of remedial or corrective action, the agency official shall:

- notify the complainant, in writing, of the action to be taken; and
- take all necessary steps to ensure that the corrective or remedial action is implemented and to avoid any future occurrence.

If the EC member who would otherwise be responsible for taking the above actions is named or included in the decision that a violation of the EO has occurred, the report will go to the GC (or to the DA, if the GC is named) to make the appropriate determinations and take appropriate action.

If a determination is made that the complainant is not entitled to any corrective or remedial action, the complainant will be so notified and advised of the reasons for this finding.

**Remedies.** If the DA (or GC) finds that there was a violation of the EO, the complainant shall be entitled to all appropriate, non-monetary, equitable relief to place him/her in the same or equivalent position s/he would have occupied absent discrimination.

Nothing in the EO authorizes monetary relief to the complainant as a form of remedial or corrective action.

**Appeals.** A complainant who wishes to appeal a decision of the DA (or GC), or the subsequent implementation by the appropriate EC member, must file that appeal within 45 days of receipt of the decision letter, unless this time is extended for good cause. Appeals must be made, in writing, to the RRB's three-member Board.

Timely appeals shall be accepted and processed by the Board. The Board will have the authority to conduct any investigation it deems necessary, including the authority to conduct a hearing on the matter.

The three-member Board will notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Board determines that it needs additional information from the complainant, the notice of its determination on the



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appeal will be given within 30 days from the date it receives the additional information.

Complainants may request judicial review of final decisions, with or without an appeal to the three-member Board, in accordance with the Administrative Procedures Act, 5 U.S.C. 701, et seq.

### **6. Reporting Requirements.**

For the first 3 years after issuance of this EO, the RRB shall file annual reports with the Attorney General that summarize the number, nature, and disposition of complaints filed under this Order. Reports are to be submitted to the Assistant Attorney General for Civil Rights within 90 days of the end of the preceding year's activities. Subsequent reports are submitted every 3 years. Reports will be submitted using DOJ's complaint report form available on the EO 13160 web page.